UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION DOCKET NO. 1:19-cv-127

MILES WALKER,)	
Plaintiff,)	
Vs.)	ORDER
ANDREW SAUL, Commissioner of Social Security,)))	
Defendant.)	

THIS MATTER is before the Court upon Plaintiff's Motion for Summary Judgment (Doc. No. 9) and Commissioner's Motion for Summary Judgment (Doc. No. 11).

Plaintiff filed an application for a period of disability and Disability Insurance Benefits on January 3, 2013, alleging a disability onset date of June 1, 2009. Plaintiff subsequently amended his alleged onset date to May 1, 2011. Plaintiff's claim was denied both initially and on reconsideration. After a hearing before an administrative law judge ("ALJ"), the ALJ issued an unfavorable decision on July 17, 2015, which was ultimately remanded by this court on June 18, 2018. After a new hearing, a different ALJ found Plaintiff not disabled at step 5 of her analysis. Plaintiff now seeks review of this decision.

The only issues on review are whether the Commissioner applied the correct legal standards and whether the Commissioner's decision is supported by substantial evidence. *Richardson v. Perales*, 402 U.S. 389, 390 (1971); *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990). Review by a federal court is not *de novo*, *Smith v. Schwieker*, 795 F.2d 343, 345 (4th Cir. 1986); rather, inquiry is limited to whether there was "such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion," Richardson, 402 U.S. at 400.

Even if the undersigned were to find that a preponderance of the evidence weighed against the

Commissioner's decision, the Commissioner's decision would have to be affirmed if supported

by substantial evidence. Hays, 907 F.2d at 1456.

The Court has carefully considered the motions and reviewed the briefs and the record and

finds that the ALJ's decision is not supported by substantial evidence. The Court finds the

Plaintiff's arguments to be persuasive as to both his assignments of error. Accordingly, for the

reasons stated in Plaintiff's brief, Plaintiff's Motion for Summary Judgment will be granted, the

Commissioner's Motion for Summary Judgment will be denied, and the decision of the

Commissioner will be vacated.

ORDER

IT IS, THEREFORE, ORDERED that

(1) the decision of the Commissioner, denying the relief sought by Plaintiff, is

VACATED;

(2) the Plaintiff's Motion for Summary Judgment (Doc. No. 9) is **GRANTED**; and

(3) the Commissioner's Motion for Summary Judgment (Doc. 11) is **DENIED**; and

(4) the matter is hereby **REMANDED** for further consideration.

Signed: February 11, 2020

Graham C. Mullen

United States District Judge